

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED GUARDIANSHIP SERVICES, as
the Successor Guardian of the Personal Needs
and Property of Plaintiff MATILDA
VINCENTY,

Plaintiff,

v.

JOSEPH LURIO, NANCY TENNEY, THE
INSTITUTE FOR FAMILY HEALTH
(AMSTERDAM CENTER), ST. LUKE'S-
ROOSEVELT HOSPITAL CENTER,
CONTINUUM HEALTH PARTNERS, INC.,
and JOHN OR JANE DOE,

Defendants.

USDC-SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#:
DATE FILED: 11/21/19

No. 19-CV-7046 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

Since 2015, United Guardianship Services has served as successor guardian for Plaintiff Matilda Vincenty's "personal needs and property." Dkt. 1 at 2. As detailed in the Court's previous orders, neither United Guardianship Services nor Ms. Vincenty appear to be represented by counsel in this action, as is required. *See James v. New York*, 415 F. App'x 295, 297 (2d Cir. 2011) ("A court may not determine on its merits the claim of an incompetent person who is not properly represented."); *Berrios v. New York City Housing Authority*, 564 F.3d 130, 134 (2d Cir. 2009) ("If the [guardian] of [a] minor or incompetent person is not himself an attorney, he must be represented by an attorney in order to conduct the litigation."); *see also Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20, 22 (2d Cir. 1983) ("[I]t is established that a corporation, which is an artificial entity that can only act through agents, cannot proceed *pro se*."). On October 31, 2019, the Court ordered United Guardianship Services to inform the Court, by written letter, of its progress in finding legal representation for Ms. Vincenty. The Court is now

in receipt of the attached letter from Joseph Lazar of United Guardianship Services, dated November 11, 2019. According to Mr. Lazar, United Guardianship Services has been “trying to find counsel willing to represent” Ms. Vincenty in this action since August 8, 2019, but has been “unable to find counsel willing to assume this case.” Mr. Lazar states that United Guardianship does not “have counsel on staff” and that “none of the attorneys that [they] approached[] would take the case.” Mr. Lazar thus requests that the Court appoint counsel.

In civil cases, unlike in criminal cases, there is no requirement that courts supply indigent litigants with counsel. *See Hodge v. Police Officers*, 802 F.2d 58, 60 (2d Cir. 1986). Instead, the courts have “broad discretion” when deciding whether to grant an indigent litigant’s request for representation. *Id.* Even if a court believes that a litigant should have a lawyer, a court has no authority to “appoint” counsel, but instead may only “request” that an attorney volunteer to represent the litigant. *See Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 301–08 (1989). Courts must grant applications for counsel sparingly in order to preserve the “precious commodity” of volunteer-lawyer time for those litigants whose causes are truly deserving. *Cooper v. A. Sargenti Co., Inc.*, 877 F.2d 170, 172–73 (2d Cir. 1989) (per curiam).

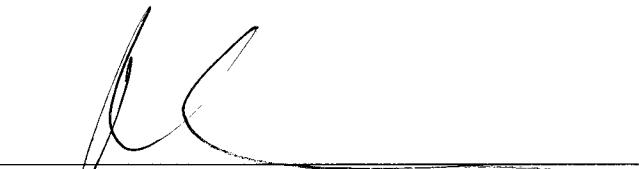
Courts, however, generally seek volunteer counsel only where the litigant is unable to afford counsel. *See* 28 U.S.C. § 1915(e)(1) (providing that courts “may request an attorney to represent any person unable to afford counsel”); *Terminate Control Corp. v. Horowitz*, 28 F.3d 1335, 1341 (2d Cir. 1994); *Boyle v. Town of Hammond*, No. 7:08-CV-1065 (TJM/GJD), 2008 WL 11416992, *6–7 (N.D.N.Y. Oct. 24, 2008). Putting aside the question of whether United Guardianship Services or Ms. Vincenty is the relevant litigant for purposes of the *in forma pauperis* statute, Mr. Lazar has not suggested that United Guardianship Services and/or Ms.

Vincenty is unable to afford counsel in this action. United Guardianship Service's request for counsel is therefore denied without prejudice.

No later than December 23, 2019, United Guardianship Services must inform the Court as to whether it intends to proceed with this action and, if so, update the Court of its progress in obtaining legal representation for Ms. Vincenty. United Guardianship Services is warned that if it fails to obtain counsel in this action, the Court may dismiss the case. *See Berrios*, 564 F.3d at 135 ("[W]here the owner of a claim is [an] incompetent person, . . . unless that claimant is properly represented by a guardian ad litem, . . . and that representative either is, or is represented by, an attorney, the court should not issue a ruling as to whether the complaint states a claim on which relief may be granted."); *id.* ("If counsel is not secured or appointed [for the guardian], the court may dismiss the complaint.").

SO ORDERED.

Dated: November 21, 2019
New York, New York



Ronnie Abrams
United States District Judge

UnitedGuardianshipServices

A project of LCG Community Services

Mark J. Lazar
Executive Director

Albert C. Wilshire
Chairman of the Board

November 11, 2019

Hon.Ronnie Abrams
United States District Judge
United States District Court
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: MA TILDA VINCENTY

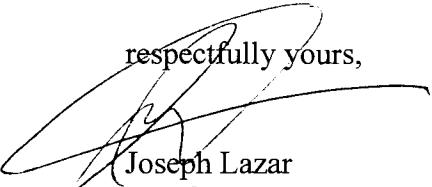
Dear Justice Abrams;

United Guardianship Services has been trying to find counsel willing to represent Ms. Matilda Vincenty in her case against - Joseph Lurio, Nancy Tenney, The Institute For Family Health (Amsterdam Center), St. Luke's-Roosevelt Hospital Center, Continuum Health Partners, Inc., And John Or Jane Doe, since August 8 of this year (as can be evidenced by the attached email threads). We have been unable to find counsel willing to assume this case. One of the attorneys, Michael Korsinsky, of Korsinsky and Klein, LLP spent a month and a half, trying to get information from the previous attorney, Scott Epstein.

At this point, I really don't see how we can find counsel to represent us in this matter, and are requesting that the court appoint counsel. Korsinsky & Klein was my first choice, because they are very well versed in Guardianship law, but do liability law as well. Our lack of response was not neglect (as you can see from the attached emails), rather our trying to get a positive response to the court. We do not have counsel on staff, and none of the attorneys that we approached, would take the case.

Should you have any questions regarding this matter, please feel free to contact me at (718) 466-2200 X 507

respectfully yours,



Joseph Lazar
Chief Financial Officer
LCG Community Services

5614 16th Avenue · Brooklyn, New York · 11204
Phone: 718-715-4190 · Fax: 718-715-4195
www.lcgcs.org www.ugsny.org

- **Joseph Lazar** <jlazar@lazarcg.com>

To:Michael Korsinsky

Aug 8 at 4:44 PM

Are you interested in this?

Joseph Lazar

jlazar@lazarcg.com

----- Forwarded Message -----

From: awiltshire@lcgcs.org <awiltshire@lcgcs.org>

To: Joseph Lazar <jlazar@lazarcg.com>

Cc: Albert Wiltshire <awiltshire@lcgcs.org>

Sent: Thursday, August 8, 2019, 01:19:03 PM EDT

Subject: M. Vincenty

Joe,

Attached is an order directing us to get an attorney for M. Vincenty.

Al

Albert C. Wiltshire

Chairman of the Board

LCG Community Services, Inc.

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www.ugsnv.org

Michael Korsinsky <mk@kklawfirm.com>

To: Joseph Lazar

Cc: Albert Wiltshire

Sep 12 at 3:29 PM

I cannot take a case I have no idea what happened. I will try him again now.

From: Joseph Lazar <jlazar@lazarcg.com>

Sent: Thursday, September 12, 2019 3:20:55 PM

To: Michael Korsinsky <mk@kklawfirm.com>

Cc: Albert Wiltshire <awiltshire@lcgcs.org>

Subject: Re: Attorney

I really need to know if you can do this case. Our extension with is running out. It doesn't look as if the other attorney is going to get back to you, and you can probably use that in court, but at this point, I'm over a barrel, and we need to get someone on.

Joseph Lazar
jlazar@lazarcg.com

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On Wednesday, September 11, 2019, 02:12:01 PM EDT, Michael Korsinsky <mk@kklawfirm.com> wrote:

The attorney has not been returning my calls on the case. scott Epstein. I'll try again today.

MICHAEL KORSINSKY, ESQ.

Brooklyn Office:

2926 Avenue L

Brooklyn, New York 11210

New York Office:

55 Broadway, 10th Floor

New York, New York 10006

Phone (212) 495-8133

Direct Fax (212) 419-3893

Email mk@kklawfirm.com

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www.lcges.org

www.ugsny.org

Michael Korsinsky <mk@kklawfirm.com>

To:Joseph Lazar

Sep 11 at 2:12 PM

The attorney has not been returning my calls on the case. scott Epstein. I'll try again today.

MICHAEL KORSINSKY, ESQ.

Brooklyn Office:

2926 Avenue L

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Phone (212) 495-8133

Direct Fax (212) 419-3893

Email mk@kklawfirm.com

www.kklawfirm.com

RE: Anything on the Vincente case. We really need counsel on it. The doctors want authorization to amputate her leg, but we don't know if that will have any impact on the Federal case. Not that we will have much of a choice.

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- **Michael Korsinsky** <mk@kklawfirm.com>

To:Joseph Lazar

Sep 5 at 1:52 PM

I will call attorney today but if the doctor says to do it then you should. That comes first.

From: Joseph Lazar <jlazar@lazarcg.com>

Sent: Wednesday, September 04, 2019 5:31 PM

To: Michael Korsinsky <mk@kklawfirm.com>

Subject: Anything on the Vincente case. We really need counsel on it. The doctors want authorization to amputate her leg, but we don't know if that will have any impact on the Federal case. Not that we will have much of a choice.

Joseph Lazar

jlazar@lazarcg.com

RE: Have you decided whether you are taking the Matilda Vincety case?

LCGCS

- **Michael Korsinsky** <mk@kklawfirm.com>

To:Joseph Lazar

Sep 2 at 12:22 PM

The lawyer will be called tomorrow as discussed.

From: Joseph Lazar <jlazar@lazarcg.com>

Sent: Thursday, August 29, 2019 3:04 PM

To: Michael Korsinsky <mk@kklawfirm.com>

Subject: Have you decided whether you are taking the Matilda Vincety case?

Joseph Lazar

jlazar@lazarcg.com

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